

The Product Liability and Mass Tort Practice

Simpson Thacher & Bartlett has been a leader in the development of product liability and mass tort law in the United States for four decades. The firm has extensive experience handling and managing all aspects of product liability and mass tort claims for industry, including managing major product liability problems at a regional, national and international level, and advising manufacturers on strategies for avoiding and dealing with product liability and other mass tort problems. The Firm has taken numerous product liability and mass tort cases to jury trial in both state and federal courts over many years, amassing substantial, invaluable courtroom experience. In addition, we have won significant law-defining appeals on behalf of our clients in these areas. The Firm's involvement with product liability cases dates back to the late 1960s, when it was retained by the world's largest automobile manufacturer to represent it in the then emerging field of product liability law. Over the years, the Firm has represented that manufacturer in over a thousand product liability actions brought under every imaginable theory of product liability law, including manufacturing defect, design defect and "failure to warn" theories. The firm has similarly represented five other large automobile manufacturers in motor vehicle product liability litigation, ranging from small property damage matters to major personal injury actions involving design defect claims that potentially impact entire motor vehicle product lines.

More recently, as product liability cases have become more complex, the Firm has been retained to represent defendants in attempted class actions and other nationwide aggregate litigations. Often, the Firm has assumed the role of United States national coordinating counsel for our clients. In that capacity, we develop overall substantive and procedural defensive strategies and coordinate defense in numerous jurisdictions, ensuring that the appropriate positions are taken in all venues. For example, we have represented the Seagram and Heineken companies in nationwide U.S. product liability litigation related to alcohol beverages and have secured dismissals of every significant case, including a recent purported class action brought against Heineken and other alcohol beverage manufacturers and importers. We have also counseled and represented other major beer, wine and spirits companies on product liability issues and litigation around the world.

Our willingness to dig deeply into the complex technical issues that these cases present and our proven ability to convey such concepts to juries in an emotionally charged environment are consistently cited by clients. It was this ability, for example, that led to the Firm's selection to represent Intel Corporation in nationwide product liability and consumer fraud litigation surrounding the introduction of Intel's Pentium® microprocessor.

We have acted as national coordinating counsel for B.A.T. Industries p.l.c., the London-based parent of Brown & Williamson, in tobacco litigation pending throughout the United States. We have successfully secured B.A.T. Industries' dismissal in numerous jurisdictions and served as trial counsel for B.A.T. Industries in a number of cases, including class actions and attorney general suits against members of the tobacco industry.

In firearms litigation, we successfully handled the appeal in the seminal *Hamilton v. Beretta* case that resulted in the reversal of the judgment against firearms manufacturers and defined New York law as generally not allowing personal injury claims by firearms crime victims against firearms manufacturers. We also counseled an overseas parent holding company of Smith & Wesson concerning the nationwide firearms litigation.

In pharmaceutical litigation, we were retained by American Home Products (now Wyeth) to coordinate and to try its Fen-Phen diet drug litigation in New York and by Sanofi Pharmaceuticals to coordinate its defense on a number of different pharmaceutical products.

NEC Corporation retained the Firm to serve as its national coordinating counsel in all of its repetitive stress injury (RSI) cases in the U.S. As a result of our success on a mandamus petition in the Second Circuit Court of Appeals, the trial court's consolidation of all such cases was vacated, which had a positive effect for the entire computer industry on the future course of RSI litigation.

Finally, the Firm has also conducted internal investigations concerning product liability matters on behalf of the management and boards of directors of companies with significant product liability problems.

Examples of some of the largest current product liability mega-litigations being handled by the Firm include:

- The Firm has represented Heineken as lead counsel in litigation alleging that Heineken and other beer and spirits companies have targeted underage people with their advertising. The plaintiffs purport to represent parents seeking the recovery of "billions of dollars" that they claim that their sons and daughters spent on alcohol beverages while underage since 1982. We have coordinated the defense group's dismissal motions, and recently obtained a dismissal of one of the cases in Colorado.
- The Firm represents Argenbright Security, Inc, the Firm that installed and managed airport security at Dulles International and Newark International airports on 9/11, in hundreds of cases seeking damages from the 9/11 plane crashes into the World Trade Center towers.
- The Firm has been successfully representing USF&G, St. Paul and Travelers in lawsuits by several thousand asbestos claimants seeking to hold these insurers directly liable for personal injuries based on various theories such as failure to warn, conspiracy, negligent undertaking, etc. Most of the cases are pending in Texas and Ohio.